Stevens Ford, Inc. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) Local 376. Case 39-CA-426

August 3, 1981

DECISION AND ORDER

Upon a charge filed on November 19, 1980, by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) Local 376, herein called the Union, and duly served on Stevens Ford, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Officer-in-Charge for Subregion 39, issued a complaint on December 19, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 18, 1980, following a Board election in Case 1-RC-16152, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about August 21, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On December 29, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 26, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 17, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent essentially denies the validity of the Union's certification and contends that it has no obligation to bargain with the Union. It further contends as it did in Case 1-RC-16152 that, because the attorney who appeared on behalf of the Subregional Office in that case and the Hearing Officer who presided at the hearing are both employees of the Board, Respondent was denied due process. In his Motion To Transfer Case to Board and for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues previously considered in the underlying representation case, and that there are no issues of fact warranting a hearing. We agree.

Review of the record, including that of the representation proceeding in Case 1-RC-16152, shows that, pursuant to a Stipulation for Consent Election, a secret-ballot election was held on March 27, 1979. The tally of ballots disclosed nine votes for and nine ballots against the Union, with three challenged ballots. Thereafter on April 2, 1979, the Union filed timely objections to conduct affecting the results of the election alleging that the Employer: (1) conducted a campaign of fear and intimidation; (2) made material misrepresentations; (3) discriminated against employees by withholding benefits; (4) unlawfully promised benefits; and (5) unlawfully assembled employees in management offices. On April 20, 1979, the Union, with the approval of the Acting Regional Director for Region 1, withdrew Objections 1 and 5.

Thereafter on May 30, 1979, the Acting Regional Director for Region 1 issued a report on objections and the challenged ballots. In his report, the Acting Regional Director recommended that: (1) the Petitioner's Objection 2 be overruled; (2) the Petitioner's Objections 3 and 4 be sustained; (3) the challenge to the ballot of Barbara Domschine be sustained; (4) the challenge to the ballot of Paul Clark be overruled; (5) a hearing be held to resolve the challenge to the ballot of Michael Pugliese; and (6) a revised tally of ballots be issued following the resolution of the challenged ballots.

The Acting Regional Director further recommended that, if the revised tally showed that the Union had not received a majority of the valid ballots cast, the election be set aside and a second election be directed based on the recommendation that Objections 3 and 4 be sustained. Alternatively he recommended that, if the revised tally showed

[1] Official notice is taken of the record in the representation proceeding, Case 1-RC-16152, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

that the Union had received a majority of the valid ballots, a certification of representative should issue. On August 16, 1979, the Board issued a Decision and Direction[2] adopting the Acting Regional Director's recommendations contained in his report on objections and the challenged ballots.

On December 31, 1979, after a notice of hearing issued by the Regional Director for Region 1 of the Board, a duly designated Hearing Officer from Region 29 of the Board issued a hearing officer's report and recommendations on the challenged ballots in which he found Michael Pugliese to be a supervisor within the meaning of Section 2(11) of the Act and recommended that the challenge to Pugliese's ballot be sustained. On January 23, 1980, Respondent filed with the Board exceptions and a brief to the Regional Director's report and recommendations on the challenged ballots.

On July 31, 1980, the Board issued a Supplemental Decision and Direction[3] which adopted the Hearing Officer's findings and recommendations and which directed the Regional Director to open and count the ballot of Paul Clark and to thereafter serve on the parties a revised tally of ballots and issue the appropriate certification of representative if the revised tally revealed that the Petitioner received a majority of the valid ballots cast.

On August 8, 1980, pursuant to the Board's Supplemental Decision and Direction, the Regional Director for Region 1 opened and counted the challenged ballot of Paul Clark and served upon the parties a revised tally which showed that a majority of the valid ballots were cast for the Petitioner. Inasmuch as no objections were filed to the revised tally within the time allowed, the Regional Director for Region 1, on August 18, 1980, issued a Certification of Representative.

In this proceeding, Respondent contends that it was denied due process and that the Union was improperly certified. The General Counsel contends that Respondent is improperly seeking to litigate issues that were raised and decided in the representation proceeding. We agree with the General Counsel.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The parties stipulated and we find that Respondent Stevens Ford, Inc., with its principal place of business located at 717 Bridgeport Avenue, Milford, Connecticut, is a corporation engaged in the sale and service of automobiles. Annually it receives revenues in excess of $500,000 and receives goods from points directly outside the State valued in excess of $50,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) Local 376, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All service and maintenance employees including mechanics, service writers, partsmen, bodymen, and drivers employed by the Employer at its 717 Bridgeport Avenue, Milford, Connecticut location, but excluding office clerical employees professional employees, sales persons, dispatcher, confidential employees, guards and supervisors as defined in the Act.

[2] Not reported in bound volume of Board Decisions.
[3] Not reported in bound volumes of Board Decisions.
[4] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

2. The certification

On March 27, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 1, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 18, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about August 21, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 21, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since August 21, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Stevens Ford, Inc., set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Stevens Ford, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) Local 376, is a labor organization within the meaning of Section 2(5) of the Act.

3. All service and maintenance employees including mechanics, service writers, partsmen, bodymen, and drivers employed by the Employer at its 717 Bridgeport Avenue, Milford, Connecticut, location, but excluding office clerical employees, professional employees, salespersons, dispatcher, confidential employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 18, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 21, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Stevens Ford, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) Local 376, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All service and maintenance employees including mechanics, service writers, partsmen, bodymen, and drivers employed by the Employer at its 717 Bridgeport Avenue, Milford, Connecticut location, but excluding office clerical employees professional employees, sales persons, dispatcher, confidential employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Milford, Connecticut, facility copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Officer-in-Charge for Subregion 39, after being duly signed by Respondent's representative, shall be posted by Respondent, immediately upon receipt thereof, and be maintained by it for for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Officer-in-Charge for Subregion 39, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) Local 376, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All service and maintenance employees including mechanics, service writers, partsmen, bodymen, and drivers employed by the Employer at its 717 Bridgeport Avenue, Milford, Connecticut location, but excluding office clerical employees professional employees, sales persons, dispatcher, confidential employees, guards and supervisors as defined in the Act.

STEVENS FORD, INC.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."